



existence of recreational equipment. Thus, the board finds no reason to request the owner to remove the basketball hoop.” July 18, 2000 letter; Case file page 67-69.

By May 2001, a new Board of Directors had been installed by the community with Mrs. Graninger no longer serving on the Board. At the May 5, 2001, Board of Directors meeting, the Board unanimously declared that the basketball hoop was a nuisance and ordered the Graningers to remove it within seven days “from the date of the letter.” May 5, 2001, Minutes; Case file page 76. The Board sent a letter to the Graningers dated May 11, 2001, informing them of the Board’s decision. The Graningers did not receive the letter. On May 22, 2001, the basketball hoop was removed and destroyed at the direction of members of the Board of Directors.

The Graningers then filed a complaint with the Commission on Common Ownership Communities seeking restitution for the basketball hoop.<sup>2</sup>

#### **FINDINGS OF FACT**

1. Michael and Brenda Graninger, complainants, are homeowners residing at 8236 Mountain Ash Way, Gaithersburg MD 20879. This residence is located in the Overbrook at Flower Hill Homeowners Association.
2. The Overbrook at Flower Hill Homeowners Association is a townhome community located in Gaithersburg Maryland. The community is governed by Articles of Incorporation, Bylaws, and a Declaration of Covenants, Conditions and Restrictions.
3. The Graningers purchased a basketball hoop and placed that hoop on Association common area for use by their child and others in the community.
4. Members of the community complained to the Association Board of Directors concerning the basketball hoop.
5. On May 5, 2001, the Board of Directors found that the basketball hoop was a nuisance and ordered it removed.

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<sup>2</sup> The Graningers also sought to have access to the records of the Association. In their response, the Association took the position that there was no requirement to provide “special arrangements for the inspection of records.” At the hearing, Kevin Kidrick, President of the Association, admitted this position was in error and agreed to provide access as required by law.

6. On May 22, 2001, the basketball hoop was removed and disposed of at the direction of certain unidentified members of the board.
7. The cost to purchase a new basketball hoop is \$320.00

### **CONCLUSIONS OF LAW**

1. The Overbrook at Flower Hill Homeowners Association Articles of Incorporation, Bylaws, and Declaration of Covenants, Conditions And Restrictions are valid and enforceable documents. Markey, et al. v. Wolf, et al., 607 A.2d 82, 87 (Md. 1992).
2. Article IX, Section 3, of the Declaration of Covenants, Conditions And Restrictions entitled Protective Covenants and Restrictions, gives the Association the authority to prohibit a nuisance. "No noxious or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon that may be or become a nuisance or annoyance to the community."
3. "Involuntary or constructive bailments" arise in situations in which one person receives lawful possession of another's property, other than by virtue of a bailment contract. Choice Hotels International, Inc. v. Manor Care of America, Inc., 143 Md. App. 393, 401 n.1 (2002).
4. Conversion is not the acquisition of the personal property in a wrongful manner but "the wrongful deprivation of a person of property to the possession of which he is entitled." Wallace v. Lechman & Johnson, Inc., 354 Md. 622, 633 (1999) (quoting Saunders v. Mullinix, 195 Md. 235, 240 (1950)).

### **DISCUSSION**

The Overbrook at Flower Hill Homeowners Association's Declaration of Covenants, Conditions and Restrictions allows the community to prohibit activities that are, in the Board of Director's opinion, a "nuisance or annoyance to the neighborhood." On May 5, 2001, the Board determined that the Graninger's basketball hoop, placed on community common area, was a nuisance and ordered it removed. This was well within the Board's authority.

However, the undisputed testimony of Mr. and Mrs. Graninger, at the hearing conducted on June 26, 2002, and the confirming testimony from Kevin Kidrick, the Association's President, indicate that the Graningers never received notice of the Board's decision. Even so, the Association had the authority to have the basketball hoop removed. However, the Association had no authority to dispose of the basketball hoop, Mr. and Mrs. Graninger's personal property. By taking control of the basketball hoop, the Association created a constructive bailment. This was a legal possession of the basketball hoop but contained an obligation to reasonably protect the basketball hoop from damage. When the Association, acting through an unidentified minority of the Board, had the hoop destroyed, the Association converted the basketball hoop and became liable to the Graningers for damages. See Schermer v. Neurath, 54 Md. 491, 496 (1880) (a person who keeps property for the benefit of another without reward is liable for the wrongful conduct resulting in the loss of that property.) Therefore, the Graningers had no right to put the basketball hoop on common area and have no right, without the Board's permission, to replace the hoop. Equally, the Board had no authority to dispose of the hoop and owes the Graningers damages.

The measure of damages for conversion is the market value of the item at the time and place of conversion plus interest to the date of judgment. Additional damages adequate to compensate the owner for the injurious consequences of the conversion that result in a loss greater than the market value at the time of the loss may be allowed if it does not create an injustice to the party that converted the property. Staub v. Staub, 37 Md. App. 141, 145-46 (1977). In that light, the panel determines that the appropriate measure of damages is the replacement value of the basketball hoop. Both the Graningers and the Association agreed that the replacement value of the basketball hoop is \$320.00

### **ORDER**

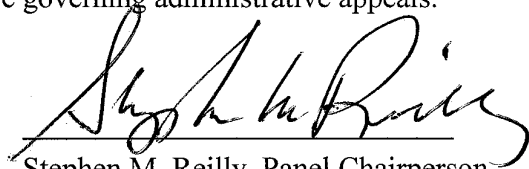
In view of the foregoing, and based on the record, for the reasons set forth above, the Commission finds:

The Overbrook at Flower Hill Homeowners Association has the authority to prohibit activities it considers a nuisance, specifically, it had the authority to order the Graningers to remove the basketball hoop placed within the community common area. Furthermore, the Association had the authority to remove the basketball hoop from the common area. However, the Association

did not have the right to dispose of the basketball hoop without the consent of the Graningers. Therefore, the Graningers may not place a basketball hoop on common area without specific permission from the Overbrook at Flower Hill Homeowners Association. In addition, the Overbrook at Flower Hill Homeowners Association must pay the Graningers the sum of \$320.00 as damages for the conversion of the basketball hoop. Each party is responsible for his/its own attorney fees and other costs associated with this action.

The foregoing was concurred in by panel members Perkins, Huggins and Reilly.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

A handwritten signature in black ink, appearing to read "Stephen M. Reilly", is written over a horizontal line.

Stephen M. Reilly, Panel Chairperson  
Commission on Common Ownership  
Communities